

ARIEL C. MacDONALD ET AL.

IBLA 80-791

Decided February 19, 1981

Appeal from the decision of the Oregon State Office, Bureau of Land Management, declaring mining claim OR MC 16262 null and void.

Affirmed.

1. Mining Claims: Lands Subject to

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

APPEARANCES: Guy A. Stokes, Esq., Chandler, Walberg & Stokes, Coos Bay, Oregon.

OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

Ariel C. MacDonald, Evelyn MacDonald, and Jim Boatman have appealed the decision of the Oregon State Office, Bureau of Land Management (BLM), dated June 13, 1980, declaring the Opportunity 1/ placer mining claim, OR MC 16262, null and void because the land embraced within the claim was not subject to location under the mining laws of the United States at the time of the location of the claim.

1/ The name of the claim was identified in the notice of location as "Oppertunity," but later documents refer to the claim as "Opportunity."

In their statement of reasons appellants argue that the BLM decision is erroneous because the land encompassed by their claim is owned by the United States and subject to location under the mining laws. They also assert that a valid mining claim was located on the lands before the patent issued and that they succeeded by mesne conveyances to that claim. They further urge that the decision is not supported by substantial evidence.

The case file contains a copy of the location notice for the Opportunity mining claim indicating that Betty and Argus L. Fipps located the claim on July 9, 1945, and a copy of a quitclaim deed conveying the claim from the Fippses to Ariel C. MacDonald on February 21, 1947. The copy of the notice of location recorded with BLM does not contain a sufficient description of the land embraced in the claim to identify its location other than being within sec. 11, T. 32 S., R. 14 W., Willamette meridian. The description of the claim is tied by metes and bounds to a private tract of land owned by a named individual, but is not tied to the public land survey. The notice of location is accompanied by a map. The inscription beside the sketch of the claim boundaries describes the claim as N 1/2 NE 1/4 SW 1/4 of sec. 11.

The deed dated February 21, 1947, conveying the claim from the initial locator to appellant MacDonald describes the land by metes and bounds description tied to the public land survey which identifies the N 1/2 NE 1/4 SW 1/4 of sec. 11. The affidavits of annual labor filed with BLM for the subject claim identify the location of the claim as the N 1/2 NE 1/4 SW 1/4 of sec. 11.

The BLM decision recites that the title to the NE 1/4 SW 1/4 of sec. 11, properly described as surveyed Lot 4, was conveyed without a reservation of minerals by patent No. 50255 on March 3, 1909. Examination of the status plat contained in the case file reveals a notation that the land in question was conveyed by patent No. 50225 without reservation of minerals. Appellants have presented no documentation to support their claims that the land is subject to location or alternatively that they succeeded by valid conveyances to a claim located prior to the patent's issuance. In fact, the evidence in the case supports the BLM decision.

[1] Mining claims may only be located on lands open to the operation of the United States mining laws. Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims. Mining claims located on such land after it is so patented are null and void ab initio. Cole V. Mullen, 43 IBLA 102 (1979); John F. Drobnick, 41 IBLA 164 (1979); Baron Mining Corp., 39 IBLA 234 (1979).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Acting Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

